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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,483	12/13/2001	Atsushi Okada	216823USOXPCT	1812
22850	7590	03/05/2004	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			TRAN LIEN, THUY	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 03/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/009,483	OKADA ET AL.	
	Examiner	Art Unit	
	Lien T Tran	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rispoli et al. in view of Bernacchi et al.

Rispoli et al. disclose a process of making a bread crumb composition. The process comprises the steps of adhering an adhesive comprising a protein in amount of 1-20% and up to 10% starch. The composition may also contain seasonings such as salt, sugar, garlic etc... in any amount of up to 15%. (see columns 3-4)

The amounts of protein, starch and sugar fall within the ranges claimed. Rispoli does not teach applying the adhesive to fresh bread crumbs and then drying.

Bernacchi et al teach to apply protein to bread crumbs. They teach the protein can be applied by coating the protein dispersion to wet crumb and then drying (see col. 7 lines 23-26).

While Rispoli et al teach different methods of coating the protein, starch and sugar onto the crumbs, they also disclose other means may be employed so long as the adhesive is applied and adhered to the crumbs and the resulting crumb composition is dried (see col. 3 lines 50-60). It would have been obvious to one skilled in the art to use alternative method such as the one taught by Bernacchi et al to apply the adhesive onto the crumbs. It would have been obvious to use dried ingredients if one wants to shorten the drying time. It would have been obvious to dry the crumbs after adhering the adhesive if moist crumbs are used because the crumbs need to be dried as required by Rispoli et al.

The change in the rejection of claim 6 and the rejection of new claim 7 are necessitated by amendment.

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In the response filed Dec. 12, 2003, applicant points to column 3 and the beginning line 24 of the Rispoli et al reference and states that the reference teaches "the baked bread/crumb oil blend has a moisture content ranging from .1 to 2% etcc..". It is believed applicant points to the wrong reference. Rispoli et al do not teach baking the crumb with oil blend and column 3 beginning at line 24 discloses "if the adhesive is simply dry mixed with bread crumbs of critical particle size etcc...". The portion pointed out by applicant is in the Coleman et al reference which is no longer used in the rejection. With respect to the Rispoli et al reference, applicant argues Rispoli et al do not apply their adhesive in dry form to fresh bread crumbs; applicant point out that the bread crumbs have been toasted. This argument is not persuasive. On column 3 lines 61-66, Rispoli et al disclose the adhesives can be dissolves or dispersed in a solvent, followed by drying the solution and then grinding. Thus, the adhesive can be in dried form. As to the bread crumb being toasted, the claims do not excluded toasted bread crumb. The specification discloses fresh bread crumb as "bread crumbs obtained before drying" and in the process of making bread crumb, the dough is baked. The toasting referred to by applicant is equivalent to the conventional baking because Rispoli et al disclose the crumbs "had been toasted to uniformly brown the crumbs". There is no mention of drying. In any event, it would have been obvious to apply the adhesive to dry bread crumb or non-dry bread crumbs as both alternatives are known in the art as shown by the Bernacchi et al reference. Applicant further argues the rejection is inherently contradictory and both combined reference require an additional liquid. The claims do not exclude the liquid. Both Rispoli et al and Bernacchi et al teach

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alternative ways to apply the adhesive; but, whatever way is used, it is required in Rispoli et al that the resultant bread crumb composition is dry, i.e. free from liquid and free-flowing. When wet adhesive is used on a higher moisture content surface, the drying time is prolonged. Therefore, it would have been obvious to use dry adhesive when moist crumb is used if one wants to quicken the drying time. All these variations are within the determination of one skilled in the art; the end result is the same.

Applicant's arguments filed Dec. 12, 2003 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 572-272-1408. The examiner can normally be reached on Tuesday, Wednesday and Friday.

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The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

March 2, 2004


LIEN TRAN
PRIMARY EXAMINER
Group 1702